

AN ACT

relating to prohibiting certain private transfer fees and the preservation of private real property rights; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 5, Property Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED;
PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

Sec. 5.201. DEFINITIONS. In this subchapter:

(1) "Encumbered property" means all property, including the property of a subsequent purchaser, subject to the same private transfer fee obligation.

(2) "Lender" means a lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, and governmental agency, that customarily provides financing or an affiliate of a lending institution.

(3) "Payee" means a person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation and who may or may not have a pecuniary interest in the obligation.

(4) "Private transfer fee" means an amount of money, regardless of the method of determining the amount, that is payable on the transfer of an interest in real property or payable for a

1 right to make or accept a transfer.

2 (5) "Private transfer fee obligation" means an
3 obligation to pay a private transfer fee created under:

4 (A) a declaration or other covenant recorded in
5 the real property records in the county in which the property
6 subject to the private transfer fee obligation is located;

7 (B) a contractual agreement or promise; or

8 (C) an unrecorded contractual agreement or
9 promise.

10 (6) "Subsequent owner" means a person who acquires
11 real property by transfer from a person other than the person who is
12 the seller of the property on the date the private transfer fee
13 obligation is created.

14 (7) "Subsequent purchaser" means a person who
15 purchases real property from a person other than the person who is
16 the seller on the date the private transfer fee obligation is
17 created. The term includes a lender who provides a mortgage loan to
18 a subsequent purchaser to purchase the property.

19 (8) "Transfer" means the sale, gift, conveyance,
20 assignment, inheritance, or other transfer of an ownership interest
21 in real property.

22 Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID.

23 (a) Except as provided by this subchapter, a private transfer fee
24 obligation created on or after the effective date of this
25 subchapter is not binding or enforceable against a subsequent owner
26 or subsequent purchaser of an interest in real property and is void.

27 (b) For purposes of this subchapter, the following payments

1 are not considered private transfer fee obligations:

2 (1) consideration paid by a purchaser to a seller for
3 an interest in real property transferred, including, as applicable,
4 a mineral interest transferred, including additional consideration
5 paid to a seller for the property's appreciation, development, or
6 sale after the interest in the property has been transferred to the
7 purchaser, if the additional consideration is paid only once and
8 that payment does not bind successors in interest to the property to
9 any private transfer fee obligation;

10 (2) a commission paid to a licensed real estate broker
11 under a written agreement between a seller or purchaser and the
12 broker, including an additional commission for the property's
13 appreciation, development, or sale after the interest in property
14 is transferred to the purchaser;

15 (3) interest, a fee, a charge, or another type of
16 payment to a lender under a loan secured by a mortgage on the
17 property, including:

18 (A) a fee payable for the lender's consent to an
19 assumption of the loan or transfer of the property subject to the
20 mortgage;

21 (B) a fee or charge payable for an estoppel
22 letter or certificate;

23 (C) a shared appreciation interest or profit
24 participation; or

25 (D) other consideration payable in connection
26 with the loan;

27 (4) rent, reimbursement, a fee, a charge, or another

1 type of payment to a lessor under a lease, including a fee for
2 consent to an assignment, sublease, encumbrance, or transfer of a
3 lease;

4 (5) consideration paid to the holder of an option to
5 purchase an interest in property, or to the holder of a right of
6 first refusal or first offer to purchase an interest in property,
7 for waiving, releasing, or not exercising the option or right when
8 the property is transferred to another person;

9 (6) a fee payable to or imposed by a governmental
10 entity in connection with recording the transfer of the property;

11 (7) dues, a fee, a charge, an assessment, a fine, a
12 contribution, or another type of payment under a declaration or
13 other covenant or under law, including a fee or charge payable for a
14 change of ownership entered in the records of an association to
15 which this subdivision applies or an estoppel letter or resale
16 certificate issued under Section 207.003 by an association to which
17 this subdivision applies or the person identified under Section
18 209.004(a)(6), provided that no portion of the fee or charge is
19 required to be passed through to a third party designated or
20 identifiable in the declaration or other covenant or law or in a
21 document referenced in the declaration or other covenant or law,
22 unless paid to:

23 (A) an association as defined by Section 82.003
24 or 221.002 or the person or entity managing the association as
25 provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;

26 (B) a property owners' association as defined by
27 Section 202.001 or 209.002 or the person or entity described by

1 Section 209.004(a)(6); or

2 (C) a property owners' association as defined by
3 Section 202.001 that does not require an owner of property governed
4 by the association to be a member of the association or the person
5 or entity described by Section 209.004(a)(6);

6 (8) dues, a fee, a charge, an assessment, a fine, a
7 contribution, or another type of payment for the transfer of a club
8 membership related to the property;

9 (9) dues, a fee, a charge, an assessment, a fine, a
10 contribution, or another type of payment paid to an organization
11 exempt from federal taxation under Section 501(c)(3) or 501(c)(4),
12 Internal Revenue Code of 1986, only if the organization uses the
13 payments to directly benefit the encumbered property by:

14 (A) supporting or maintaining only the
15 encumbered property;

16 (B) constructing or repairing improvements only
17 to the encumbered property; or

18 (C) providing activities or infrastructure to
19 support quality of life, including cultural, educational,
20 charitable, recreational, environmental, and conservation
21 activities and infrastructure, that directly benefit the
22 encumbered property; or

23 (10) a fee payable to or imposed by the Veterans' Land
24 Board for consent to an assumption or transfer of a contract of sale
25 and purchase.

26 (c) The benefit described by Subsection (b)(9)(C) may
27 collaterally benefit a community composed of:

1 (1) property that is adjacent to the encumbered
2 property; or

3 (2) property a boundary of which is not more than 1,000
4 yards from a boundary of the encumbered property.

5 (d) Notwithstanding Subsection (c), an organization may
6 provide a direct benefit under Subsection (b)(9) if:

7 (1) the organization provides to the general public
8 activities or infrastructure described by Subsection (b)(9)(C);

9 (2) the provision of activities or infrastructure
10 substantially benefits the encumbered property; and

11 (3) the governing body of the organization:

12 (A) is controlled by owners of the encumbered
13 property; and

14 (B) approves payments for activities or
15 infrastructure at least annually.

16 (e) An organization may provide activities and
17 infrastructure described by Subsection (b)(9)(C) to another
18 organization exempt from federal taxation under Section 501(c)(3)
19 or 501(c)(4), Internal Revenue Code of 1986, at no charge for de
20 minimis usage without violating the requirements of this section.

21 Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF
22 EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) A person who
23 receives a private transfer fee under a private transfer fee
24 obligation created before the effective date of this subchapter
25 must, on or before January 31, 2012, file for record a "Notice of
26 Private Transfer Fee Obligation" as provided by this section in the
27 real property records of each county in which the property is

1 located.

2 (b) Multiple payees of a single private transfer fee under a
3 private transfer fee obligation must designate one payee as the
4 payee of record for the fee.

5 (c) A notice under Subsection (a) must:

6 (1) be printed in at least 14-point boldface type;

7 (2) state the amount of the private transfer fee and
8 the method of determination, if applicable;

9 (3) state the date or any circumstance under which the
10 private transfer fee obligation expires, if any;

11 (4) state the purpose for which the money from the
12 private transfer fee obligation will be used;

13 (5) notwithstanding Subsection (b), state the name of
14 each payee and each payee's contact information;

15 (6) state the name and address of the payee of record
16 to whom the payment of the fee must be sent;

17 (7) include the acknowledged signature of each payee
18 or authorized representative of each payee; and

19 (8) state the legal description of the property
20 subject to the private transfer fee obligation.

21 (d) A person required to file a notice under this section
22 shall:

23 (1) refile the notice described by this section not
24 earlier than the 30th day before the third anniversary of the
25 original filing date described by Subsection (a) and within a
26 similar 30-day period every third year thereafter; and

27 (2) amend the notice to reflect any change in the name

1 or address of any payee included in the notice not later than the
2 30th day after the date the change occurs.

3 (e) A person who amends a notice under Subsection (d)(2)
4 must include:

5 (1) the recording information of the original notice
6 filed as required by this section; and

7 (2) the legal description of the property subject to
8 the private transfer fee obligation.

9 (f) If a person required to file a notice under this section
10 fails to comply with this section:

11 (1) payment of the private transfer fee may not be a
12 requirement for the conveyance of an interest in the property to a
13 purchaser;

14 (2) the property is not subject to further obligation
15 under the private transfer fee obligation; and

16 (3) the private transfer fee obligation is void.

17 Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY
18 ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE
19 OBLIGATIONS. (a) The payee of record on the date a private
20 transfer fee is paid under a private transfer fee obligation
21 subject to Section 5.203 must accept the payment on or before the
22 30th day after the date the payment is tendered to the payee.

23 (b) If the payee of record fails to comply with Subsection
24 (a):

25 (1) the payment must be returned to the remitter;

26 (2) payment of the private transfer fee may not be a
27 requirement for the conveyance of an interest in the property to a

1 purchaser; and

2 (3) the property is not subject to further obligation
3 under the private transfer fee obligation.

4 Sec. 5.205. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION
5 REQUIRED IN CONTRACT FOR SALE. A seller of real property that may
6 be subject to a private transfer fee obligation shall provide
7 written notice to a potential purchaser stating that the obligation
8 may be governed by this subchapter.

9 Sec. 5.206. WAIVER VOID. A provision that purports to waive
10 a purchaser's rights under this subchapter is void.

11 Sec. 5.207. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING
12 PENALTIES. (a) The attorney general may institute an action for
13 injunctive or declaratory relief to restrain a violation of this
14 subchapter.

15 (b) In addition to instituting an action for injunctive or
16 declaratory relief under Subsection (a), the attorney general may
17 institute an action for civil penalties against a payee for a
18 violation of this chapter. Except as provided by Subsection (c), a
19 civil penalty assessed under this section may not exceed an amount
20 equal to two times the amount of the private transfer fee charged or
21 collected by the payee in violation of this subchapter.

22 (c) If the court in which an action under Subsection (b) is
23 pending finds that a payee violated this subchapter with a
24 frequency that constitutes a pattern or practice, the court may
25 assess a civil penalty not to exceed \$250,000.

26 (d) The comptroller shall deposit to the credit of the
27 general revenue fund all money collected under this section.

1 SECTION 2. Section 5.017, Property Code, is repealed.

2 SECTION 3. Section 5.205, Property Code, as added by this
3 Act, applies only to a contract for the sale of real property
4 entered into on or after January 1, 2012. A contract for the sale of
5 real property entered into before January 1, 2012, is governed by
6 the law in effect immediately before the effective date of this Act,
7 and the former law is continued in effect for that purpose.

8 SECTION 4. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
• 12 Act takes effect September 1, 2011.

David Dewhurst

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 8 was passed by the House on May 4, 2011, by the following vote: Yeas 135, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 8 on May 21, 2011, by the following vote: Yeas 142, Nays 1, 2 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 8 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

Letsy Spaw

Secretary of the Senate

APPROVED: 17 JUN '11

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00 P.M. CLOCK

JUN 17 2011

Boyd R. Davis

Secretary of State